Supreme Court, U. S.
FILED
DEC 13 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-910

STEPHEN HOROWITZ,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Appendix to
Petition for a Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

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APPENDIX A.

Opinion of the District Court of Appeal.

In the Court of Appeal of the State of California, Second Appellate District, Division Two.

The People of the State of California, Plaintiff and Respondent, v. Stephen Horowitz, aka Stephen Gurivich, Defendant and Appellant. 2D Crim. No. 33574, (Super. Ct. No. A075975).

Filed: July 17, 1979.

Following a plea of guilty Stephen Horowitz, aka Stephen Nicholai Gurivich, was convicted of possession of marijuana for purpose of sale (Health & Saf. Code, § 11359). He appeals from the judgment (order grant-

ing probation) seeking review of the order denying his suppression motion. He contends: I. Appellant's detention was improper. "II. The entry of Officer Soman into the vehicle without a warrant and without probable cause to search said vehicle, allegedly to obtain the registration was invalid and the fruits of said entry must be suppressed from evidence. III. There was no probable cause to justify the search of the trunk of the appellant's vehicle. IV. The search of the trunk of the vehicle after appellant was safely in police custody, without any exigent circumstances, and without a warrant or consent was invalid; therefore the contraband seized from the trunk must be suppressed from the evidence."

The evidence introduced at the suppression hearing establishes that at approximately 8:30 p.m. on April 26, 1977, plainclothes Los Angeles City Police Officers Eugene Soman and Brian Tyndall were in an unmarked vehicle when they saw appellant's car fail to stop for a red light.

The officers followed appellant's automobile as it drove 45 miles per hour in a residential area, and decided to stop the car to ascertain whether appellant was under the influence of drugs or alcohol. Appellant pulled over to the curb, exited his vehicle, approached the officers, and said his name was "Stephen Horowitz." When Officer Soman asked for his driver's license, appellant presented a Florida license in the name of "Stephen Gurivich." The officer thereupon requested the vehicle registration. Appellant explained he had a rental contract for the car and gave the officer permission to retrieve it from the glove box.

Officer Soman entered the car, took the contract from the glove compartment and observed it bore the

name "Martin Horowitz." He also observed marijuana seeds and debris on the car's floorboard and detected a very strong odor of marijuana, stronger than consistent with that small amount of debris. Since the odor seemed to be coming from the rear of the car, Officers Soman and Tyndall looked in the area of the back seat. They noticed the odor was stronger there and seemed to emanate from the trunk. Officer Soman asked appellant if he could look into the trunk. Appellant said, " 'Sure. Go ahead,' " and handed him his keys. When the officer started to walk toward the trunk, appellant changed his mind, grabbed his keys and told Officer Soman he would need a warrant to search the trunk. Appellant was arrested and taken to the police station by fellow officers.

Thereafter, based on Officer Soman's belief that the trunk contained marijuana,[1] he opened it and observed therein an open brown shopping bag containing two one-pound plastic baggies of marijuana and a partially sealed large "rubber raft" like wrapper containing 230 pounds of marijuana.

Appellant testified in his own behalf; denied commiting traffic violations, averred that he had himself removed the rental contract from the glove compartment and had given it to the officers; that upon refusing to consent to the search of his trunk he had been

[1]The court: "The amount of marijuana, the closed area in which it was contained, some of which was not contained within the poly-vinyl-type wrappers, to begin with, all of that would lead, in my view, to a concentrated odor, as a matter of course, and could well support the statements of the officers that they smelled a heavy concentration of marijuana coming from the rear of the trunk, and under the cases, as I read them, it would support the entry if, in fact, that odor had been properly observed from within the vehicle."

arrested and removed to the station; that thereafter his trunk had been searched and the marijuana found therein seized.

Appellant's contention that his detention was unlawful is without merit. "Preliminarily, we note that in a suppression proceeding under section 1538.5, the power to judge the credibility of the witnesses, to resolve any conflicts in the testimony, to weigh the evidence, and to draw factual inferences is vested in the trial court. On appeal, all presumptions favor the exercise of that power, and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence. [Citation.]" (*People v. Podesto* (1976) 62 Cal.App.3d 708, 715.)[2]

Here the officers were fully justified in stopping appellant for the traffic violations committed in their

[2]The court: "I think they had a right—I am going to resolve that there was a right to stop the vehicle under the circumstances for which the testimony was given. [¶] If Officer Soman did enter that vehicle for the purpose of obtaining the leasing contract, then what followed was a natural and proper development and would lead to a denial of this motion. [¶] If, indeed, Mr. Horowitz entered that vehicle and obtained a leasing contract, then the observations as to what occurred—as to what was present in the trunk, at least as set forth by the officers—the issue is, who entered the car and got the contract? . . . The Court believes that the proper interpretation of the evidence—and it is a close issue, I concede that—is that the officer did enter the vehicle. It would seem to be that unless he did that, the odors would not have been apparent to him, as was testified to, as emanating from the rear of the trunk, and for that reason, and for other reasons which I am not going to belabor the record with, the Court is of the view, at this time, that the motion to suppress under 1538.5 must be denied."

presence. (*People v. Podesto, supra,* at 715.) An officer may require the driver to identify himself, produce his driver's license and the registration certificate for the vehicle and question the driver regarding the violations observed. (Ibid.)

Likewise without merit is appellant's contention that Officer Soman's entry into his vehicle was improper. The court expressly credited the officer's testimony that appellant told him the vehicle rental agreement was in the glove box and gave him permission to retrieve it. Having obtained appellant's consent to retrieve the contract from the glove box, Officer Soman was in a place where he had a right to be when he observed the marijuana seeds and debris on the floor of the vehicle and smelled the strong odor of marijuana.

Although appellant contends the search of his trunk was unlawful, substantial evidence supports the trial court's express determination that the officers had reasonable cause to believe that contraband was, in fact, concealed there. (*Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 564, 568, 569, fn. 6; *People v. Cook* (1975) 13 Cal.3d 663, 668, 670; and see *People v. Superior Court (Peck)* (1974) 10 Cal.3d 645, 650; *Mann v. Superior Court* (1970) 3 Cal.3d 1, 7.)

Lastly, "[i]t is . . . manifest that 'when there is probable cause to believe that an automobile stopped on a highway contains contraband, evidence of a crime,

or was itself an instrumentality of the commission of one, law enforcement officers need not obtain a warrant before conducting a search . . . . .' [Citations.]" (*Wimberly v. Superior Court, supra,* at 563.) The marijuana disclosed thereby was properly seized.

The judgment (order granting probation) is affirmed.

NOT TO BE PUBLISHED

/s/ Compton, *J.*
COMPTON

We concur:

/s/ Roth, *P. J.*
/s/ Fleming, *J.*

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

Sept. 12, 1979

I have this day filed Order HEARING DENIED.

In re: 2 Crim. No. 33574 People vs. Horowitz.

Respectfully,

G. E. BISHEL
Clerk